

generally, *Ameriwood Industries, Inc. v. Liberman*, 2006 WL 3825291 (E.D. Mo 2006) (defining protocols for a forensic computer imaging); *see also*, *In re Ford Motor Co.*, 345 F.3d 1315, 1316-17 (11th Cir. 2003) (limiting the scope of the *Ameriwood* imaging).

6. Plaintiff's computers were first imaged on April 16, 2020.

7. Defendant then claimed the images were not sufficient and a subsequent "Ameriwood inspection" was conducted on September 21, 2020. This *Ameriwood* inspection was an all day event where Defendant's forensic computer analyst navigated through Plaintiff's computers in the presence of counsel, Plaintiff, and the Special Master.

Defendant's Motion to Compel

8. Defendant has failed to comply with this Court's Order requiring full compliance with Local Rule 37.1 (Doc. 189.) in that Defendant failed to attempt to meet and confer with counsel over Plaintiff's claims of privilege prior to filing this Motion.

9. Defendant's Motion to Compel deals solely with documents that were obtained through the *Ameriwood* imaging and inspection.

10. Plaintiff claimed privilege as to three documents and provided an appropriate privilege log.

**TRAVIS DUNCAN V. BLACKBIRD PRODUCTS GROUP, LLC
PRIVILEGE LOG**

DATE	DESCRIPTION	PRIVILEGE
N/A	File Directory-Lines: 1-1875 7985-8425 8690-9077 9093-9147 9192-9193 13794-14639 15245 15498-15500 15548-15637 15785-15821 16098-17429 17494-17552 17785-17796	Documents created by Travis Duncan and delivered to counsel for the purpose of obtaining legal advise.
7/19/18	Date and Time Stamp Information for "Terms and Conditions" files recovered from the iMac	Documents created by Travis Duncan and delivered to counsel for the purpose of obtaining legal advise.
3/27/20	Email from Travis Duncan to Rob Schultz and Michael Rudd re client	Email to counsel for the purpose of obtaining legal advise.

11. The first two entries on Plaintiff's privilege log are those of which Defendant complains are spreadsheets containing information Defendant's expert generated from Plaintiff's computers pursuant to the *Ameriwood* imaging and inspection. The first entry is a file directory generated from the *Ameriwood* inspection of Plaintiff's external hard drive. The parties and the Special Master discussed the file directory, the redactions needed, the reasons for the redactions, and the most efficient way to complete the redactions given Defendant's failure to timely pursue its requested *Ameriwood* imaging. The second entry is a report generated from the *Ameriwood* imaging that shows hits from the search term "terms and conditions." With both of these entries, limited redactions were made to protect Plaintiff's attorney client privilege in creating and transmitting documents to counsel for the purpose of seeking legal advice. The final entry is an email retrieved with Defendant's overbroad search terms which is clearly identified as an email to counsel.

12. In regard to the redactions of the file directory, Defendant consented to those redactions by not objecting during the discussions with the Special Master.

13. The privilege log mainly identifies redactions made to metadata logs created by Defendant's forensic computer analyst. The only document being withheld is an email from Plaintiff to his counsel regarding this case.

14. For these reasons, Defendant's Motion to Compel should be denied.

Defendant's Request for Sanctions

15. Defendant also commingles its Motion to Compel with a Request for Sanctions.

16. Defendant complains of four assertions of privilege at Plaintiff's first deposition and instructions by counsel to not answer the questions. (Doc. 281 ¶ 20.) This deposition occurred on September 25, 2019. Since the deposition, the parties have been before the Special Master more than 15 times. Rather than raise these objections to the Special Master, Defendant waited until literally the day before the second deposition of Plaintiff to complain.

17. Regardless of the whether these objections were appropriate, Defendant has already been granted relief by being allowed to take second depositions of Plaintiff and his wife Amber Duncan.

18. Those depositions have already been completed.

19. Therefore, Defendant was previously granted relief and its Request for Sanctions is frivolous.

20. Defendant also attempts to shoehorn in sanctions for the voluminous amount of discovery issues in this case, most of which were caused by Defendant's burdensome, complex, and unconventional discovery methods. (Doc. 280.) However, Defendant fails to substantively

argue these points in its suggestions. (Doc. 281.). Thus, Plaintiff is not able to adequately oppose those claims and Defendant's extraneous arguments for sanctions should be denied.

WHEREFORE, Duncan prays this Court deny Defendant's Motion to Compel and Request for Sanctions, and for such other and further relief as this Court may deem just and equitable.

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Certificate of Service

I hereby certify that on the 26th day of October 2020 the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon all attorneys of record.

/s/ Michael Rudd